REMARKS

After entry of this Amendment, the pending claims are: claims 1-3, 5-15, and 19-34. The Office Action dated December 31, 2007 has been carefully considered. Claims 1 and 5 have been amended. Claim 4 has been canceled. No new matter has been added. Reconsideration and allowance of the present application in view of the above Amendments and the following Remarks is respectfully requested.

In the Office Action dated December 31, 2007, the Examiner:

- rejected claims 1-15 and 19-34 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,706,068 to Ferree ("Ferree") in view of U.S. Patent No. 6,106,557 to Robioneck et al. ("Robioneck").

Independent Claims 1, 19 and 32

Independent claims 1, 19 and 32 were rejected as being unpatentable over Ferree in view of Robioneck.

Independent claim 1 requires, *inter alia*, two articulating parts each having a slide surface wherein the slide surfaces are saddle-shaped having a compound radius with at least two inflection points and an outermost end, wherein the outermost ends each include a connection element. At least one of the connecting elements including an oval recess for receiving one of the outermost ends of the adjoining articulating part so that said **at least one articulating part is slideably displaceable, in situ, with respect to said adjoining connecting element**.

According to the Examiner, Ferree discloses an intervertebral implant comprising a superior component and an inferior component wherein the superior and inferior components include a saddle-shaped slide surface. The Examiner admits that Ferree does not teach that at

least one of the outermost ends of the superior and inferior components is slidably displaceable within an oval recess formed in a connecting element. Rather, the Examiner relies on Robioneck to disclose the removable connection.

Assuming arguendo that the combination of Ferree and Robioneck is proper and that it would be obvious for one of ordinary skill in the art to break each superior and inferior component of Ferree into multiple pieces, the combination still would not disclose, teach or suggest each and every limitation of amended independent claim 1. In particular, amended independent claim 1 further requires that the connecting element include an oval recess for receiving an end of the articulating part so that the articulating part is slideably displaceable with respect to the connecting element in situ. That is, amended independent claim 1 requires the connecting element to be slidably displaceable with respect to one of the articulating parts even after the implant has been implanted within an intervertebral disk space. In this manner, the articulating parts can move with respect to one another over their saddle-shaped slide surface and can move with respect to the at least one connecting element even after implantation.

Ferree, at best, discloses an end plate that is integrally formed with the inner side. Moreover, it is respectfully submitted that Robioneck does not cure this defect. Robioneck discloses a cage-like fusion implant comprising one or more middle bodies 10 as well as two end bodies 14, 16. The end bodies 14, 16 being engageable to vertebra body plates 18, 20, respectively. Column 1, lines 30-32. The fusion implant is sized and configured such that following connection to the vertebra, the middle bodies, the end bodies and the vertebra body plates are securely anchored with respect to one another. Column 1, lines 53-55. Moreover, Robioneck discloses that with the help of pins, the two middle bodies arranged over one another

may be secured against lateral movement. Column 4, lines 17-19. Finally, as depicted in Figures 1-4 of Robioneck, the middle bodies and the end bodies contain teeth such that when the middle bodies and the end bodies are stacked onto one another their teeth are engaged into one another, thus providing further stabilization. See also Column 4, lines 57-59. Thus, Robioneck discloses a stacked fusion implant that prevents movement following implantation and thus teaches away from an implant, such as one claimed in claims 1, 19 and 32, which promotes movement following implantation.

Thus, it is respectfully submitted that neither Ferree, alone or in combination with Robioneck, discloses, teaches or suggests all of the limitations of independent claim 1 for at least this reason.

Moreover, independent claim 1, as now amended, requires that "the axes of rotation are spaced apart from one another by a distance A that is between about 0.1 to 20 mm." It is respectfully submitted that there is absolutely no disclosure, teaching or suggestion of any distance between axes of rotation in either Ferree or Robioneck. Thus, it is respectfully submitted that Ferree, either alone or in combination with Robioneck, discloses, teaches or suggests all of the limitations of independent claim 1 for at least this reason as well.

Independent claim 19 requires, *inter alia*, an intervertebral implant comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein the inner side of the first end plate includes a recess and the first end of the first member is sized and configured to be received within said recess so that said first member is **moveable with respect to said first end plate even after implantation**. Similarly, independent claim 32 requires, *inter alia*, an intervertebral implant

comprising a first end plate having an inner side and a first member having a first end, the first end being sized and configured to contact the first end plate, wherein the inner side of the first end plate includes a recess and the first end of the first member is sized and configured to be received within said recess so that said first member is **slideably displaceable, in-situ, with respect to said first end plate**.

For reasons similar to those described above in connection with independent claim 1, it is respectfully submitted that neither Ferree, alone or in combination with Robioneck, discloses, teaches or suggests a first end plate wherein the inner side of the first end plate includes a recess and a first member sized and configured to be received within said recess so that said first member is moveable even after implantation (in claim 19) or slideably displaceable, in situ (in claim 32) with respect to said first end plate. Thus, the claimed first plate and first member are more than merely "separate." They are sized and configured to permit movement in situ with respect to the first end plate.

Thus, it is respectfully submitted that neither Ferree nor Robioneck, either alone or in combination, teach, disclose or suggest all of the limitations of independent claims 19 and 32. Accordingly, for at least the above-identified reasons, it is respectfully submitted that claims 1, 19 and 32 are allowable over the cited prior art. Withdrawal of these rejections and allowance of independent claims 1, 19 and 32 is respectfully requested.

Furthermore, as claims 2-15 all depend from independent claim 1, and claims 20-31 all depend from independent claim 19 and claims 33 and 34 depend from independent claim 32, it is submitted that these claims are equally allowable. Allowance of claims 2-15, 20-31, 33 and 34 is also respectfully requested.

CONCLUSION

Applicants respectfully submit that all outstanding rejections have been addressed and are now overcome. Applicants further submit that all claims pending in this application are patentable over the cited prior art. Favorable reconsideration and withdrawal of those rejections is respectfully requested.

No fee is believed due in connection with the filing of this Response. However, if any additional fees are due the amount of such fee may be charged to Deposit Account No. 19-4709.

In the event that there are any questions, or should additional information be required, please contact Applicants' attorney at the number listed below.

Respectfully submitted,

Date: March 20, 2008

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